

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 784 of 1994

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VANTHALI VIBHAGIYA NAGRIK CO. BANK LTD.,

Versus

SIDDI HASAN AGWAN

Appearance:

MR RC KAKKAD for Petitioner
MS. S.K. MANDAVIA for respondent no.1
Respondent NOS.2 & 3 served.

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 20/02/98

ORAL JUDGEMENT

1. The petitioner herein is the original plaintiff-judgement creditor who filed execution proceedings under Order 21, CPC for execution of the decree in his favour and against the respondents judgement debtors. During the course of execution proceedings a stage was reached where the sale proclamation was to be issued in respect of the property of the judgement debtors, sale proclamation was issued, and in response thereto another bank (third party) had

raised objections against the said auction sale. Ultimately these objections were disposed of. The execution proceedings then proceeded further and reached a specific stage where the judgement creditor, by Exh.78, applied for auction of the immovable properties of respondent no.3, and for that purpose prayed for issuance of a fresh sale proclamation. The Executing Court then passed an order on 17th June 1992 directing the issuance of the sale proclamation in respect of the immovable properties of the third respondent (on payment of the process fees). It appears that these process fees were not paid and therefore sale proclamation as contemplated in the order i.e. as regards immovable properties of the third respondent, was not issued. The proceedings were then adjourned to 14th July 1992 on which date the Executing Court passed an order which is at page 14 of the present compilation. The said order unequivocally states that the petitioner has not paid the necessary process fees, nor was any explanation offered for not being ready to tender the process charges, nor was any explanation offered as to why the process fees have not been paid or tendered in time, and it therefore appeared that the petitioner was not interested in proceeding further with the Darkhast and hence the same was dismissed. This order was passed on 14th July 1992. It may be noted that even on 14th July 1992, no adjournment was sought for payment of process fees.

2. It may be clarified here that it is not this order which is specifically under challenge in the present revision inasmuch as the revision was filed in the year 1994 by which time the challenge to the said order was beyond limitation.

3. However, what the petitioner preferred to do was to file a Misc. Application before the Executing Court praying for restoration of the Darkhast. The said application is at page 15 of the present compilation. In para 2 of the said restoration application it is specifically mentioned that through a bonafide mistake and error or oversight, the process has not been paid. Thus, there is a clear admission that process had not been paid. Thus, any oral contention now sought to be raised by learned counsel for the petitioner that process had in fact been paid and the order dismissing the execution proceedings on the ground of non-payment of process fees is an error apparent on the face of the record, is a submission which is both fallacious and untenable. Apart from that, learned counsel for the petitioner fails to appreciate that the process fees had been paid in the Darkhast at various prior stages, and

that cannot be permitted to confuse the present issue viz. non-payment of specific process fees for the issuance of the sale proclamation.

4. As aforesaid, the Misc. Application for restoration of the Darkhast was heard and rejected by the Executing Court by its order dated 16th April 1994, which is the only subject matter of the present revision.

5. Having heard the learned counsel for the respective parties, I find that the impugned order is eminently sustainable. The application for restoration was sought to be made under section 151 CPC, inasmuch as no other provision could be resorted to by the petitioner. That is one of the main reasons why the Executing Court dismissed the said application. However, the impugned order goes beyond the technical maintainability of such an application under section 151 CPC. The impugned order also records that the petitioner (the applicant of the said restoration application) was not able to point out any satisfactory reason for restoration.

6. However, with a view to satisfy the conscience of the court, I have heard the learned counsel for the petitioner at length, and also perused other documents on the record of the execution proceedings which were referred to me by learned counsel for the petitioner. On the facts and circumstances of the case I am satisfied that no jurisdictional error is disclosed in respect of the order impugned in the present revision. This revision is, therefore, dismissed. Rule is discharged with no order as to costs.
